**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 298 OF 2005**

Babasaheb Siddanath Jadhav & ors. ... Appellants

V/s

Sau. Mangal Tatya Sarvade & ors. ... Respondents

Mr. Sandeep s. Salunke for the appellants.

Mr. Anand Grover with Prakash Mahadik for Resp. Nos.1 & 2.

**CORAM: P.V. KAKADE, J.**

**DATED: 13TH JUNE, 2005**

**P.C.:**

1. The appellant has preferred this appeal against the judgment and order passed by the Second Addl. District Judge, Pandharpur, dated 11.2.2005 allowing the appeal and setting aside the order passed by the Civil Judge, Jr. Divn., Pandharpur decreeing the suit i.e. R.C.S. No. 350 of 1998.

2. The plaintiffs had filed the suit for declaration that the sale deed dated 11.8.1997 executed by deceased Siddhanath in favour of defendant No.1 is illegal, null and void and was executed without consideration.

Further, plaintiffs had sought relief of perpetual injunction restraining the defendants from causing obstruction and interference in their peaceful possession in the suit property.

3. The defendants challenged the suit on various grounds. The learned Trial Judge, after hearing both parties came to the conclusion that the plaintiffs had proved that the defendant No.1 had played fraud and obtained execution of the suit document i.e. sale deed of the suit land. It was further held that plaintiffs had proved that they were in possession of the suit land and defendants were causing obstruction to their possession and, as such, the suit for declaration as well as perpetual injunction came to be dismissed.

4. The appeal was carried to the Additional District Court, Pandharpur. The learned Addl. District Judge, after hearing both parties allowed the appeal and decree came to be set aside and the suit was dismissed. Hence the present appeal.

5. I have heard the learned counsel for both parties. Perused the record.

At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The only point sought to be agitated is to the effect that the sale deed Exh.78 which was subject matter of the dispute was executed without consideration. However, there was no specific evidence in order to substantiate the said claim that there was no consideration at the foot of the suit sale deed. Moreover, such plea appears to be barred by virtue of provision of Sec. 92 of the Evidence Act, because it is an evident position that the contents of the sale deed itself are sufficient to show that proper consideration had passed at the time of its execution.

6. Plaintiffs sought to induct the evidence to the effect that there was fraud played by the defendants while obtaining execution of the sale deed of the suit land. The theory of fraud was sought to be introduced on the ground that within a short time after execution of the sale deed, the executant was murdered for which criminal proceeding is pending. However, mere fact that the executant was killed within a short time after execution of the sale deed itself would not give rise to any conclusion that earlier execution of the sale deed was obtained by fraud. Moreover, as rightly pointed out

by the lower appellate Court Judge that the Trial Court erred in holding that there was an element of fraud without having any specific pleading to that effect. In other words, the lower appellate Court appears to have rightly considered the pros and cons of the evidence on record and has come to the conclusion that the suit deserves to be dismissed. On perusal of the judgments of both the Courts below, I am of the view that the lower appellate Court has rightly decided the appeal and dismissed the suit and said order would not call for any interference as it is seen that the issues involved are pure questions of facts and substantial questions of law are not involved in the dispute.

7. In the result, the appeal stands dismissed. Consequently, the Civil Application No. 544 of 2005 also stands dismissed.

( P. V. Kakade, J. )